

Extension of Mode 4 commitments to include unskilled workers in the WTO. A win win situation, especially for LDCs

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1. Introduction

International trade in services is continually growing, making bigger contributions to the gross domestic product of countries. For the period 2000-2003, trade in services represented 16 per cent of the total trade of developing countries, expanding at the same pace as their trade in goods. While the share of workers employed in services activities is about 30-40 per cent in developing countries as a group, it has reached 53 per cent in some developing economies and hovers around 70 per cent in most developed countries.¹

For LDCs, services play a key role in the eradication of poverty, as most of them do not only have a purely commercial role, but also perform social, cultural, and welfare-enhancing functions. The services sector plays a crucial role in human development in the form of essential services, as a hub of economic activity such as in tourism, and through the linkages, both forward and backward, created with other sectors such as manufacturing, investment, agriculture, and others.

The multi-faceted role that services play in LDCs is well summarized in Paragraph 2 of the Modalities for the Special Treatment of LDCs, (hereinafter referred to as the LDC Modalities) which provides that the importance of services for LDCs goes beyond pure economic significance due to the major role services play for achieving social and development objectives, and as a means of addressing poverty, upgrading welfare, improving universal availability and access to basic services, and in ensuring sustainable development, including its social dimension.

LDCs have proven comparative advantages in provision of services through the movement of their natural persons. In WTO language, this is Mode 4.

Liberalization of markets for semi-skilled workers in the WTO would create a win-win situation, with development potentials for LDCs. From the outset, it is worth noting that *LDCs are not seeking liberalization of unskilled workers, but that of semi-skilled workers*. Many times, the terms are used interchangeably, but when one looks at the minimum qualifications proposed by LDCs in their revised request on Mode 4 for the categories in which they want liberalization, the difference is clear. LDCs propose that services suppliers have diplomas, certificates, and experience, all of whose attainment

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¹ See UNCTAD, *Handbook of Statistics, 2004*. Also see *Participation of the developing economies in the global trading system*, WT/COMTD/W/136.

does not fit within the meaning of *unskilled*. This paper makes the argument that in order for GATS liberalization to make meaningful contribution to the economies of LDCs, Members must extend the scope of their commitments beyond highly skilled professionals. The paper argues that LDCs do not have capacity to compete with high skill professionals of other WTO Members. Instead, they have ready export capacity for semi-skilled workers.

The paper starts by introducing the importance of services to LDCs, explores the economic justification for Mode 4 commitments for semi-skilled workers, attempting to dispel commonly held myths, and proceeds to the legal mandate within the GATS for liberalization of semi-skilled workers. The paper takes a look at the state of play in Mode 4 negotiations, looking at the LDC revised request on Mode 4, to give an indication of which sectors are envisaged for liberalization under the GATS, as well as point out critical differences between the LDC request, and the plurilateral request on Mode 4. Options are presented for better managing Mode 4 commitments of semi-skilled workers in the GATS, and a conclusion summarizing key issues follows, emphasizing the win-win nature of such liberalization.

II. Importance of Trade in services to LDCs

Services continue to play a key role in the economies of developing countries, including LDCs. At the introduction of services in the Uruguay Round of negotiations, many LDCs were unfamiliar with the dynamics of international trade in services. Traditionally, most LDCs rely on agricultural production for their export earnings. However, owing to the great vulnerabilities typical in this sector, recent years have shown that LDCs are looking at services with renewed interest. According to the UNCTAD LDC Report of 2006, the decade 2000-2010 will be a first, in which growth of the economically active population outside agriculture will outpace agriculture.² In this report, trade in services is singled out as a likely scorer, creating dynamic inter-sectoral linkages.

Many LDCs are taking direct policy choices to include services in their national development strategies. This new trend signals a paradigm shift, wherein, governments are taking direct intervention to design policies that can lead to the development of capacities to export services, as well as to support the much-needed inflow of foreign direct investment, in the hope for developing sound and robust services industries. Most LDCs have sought to liberalize their services markets through policies of privatization, with a view to attracting foreign direct investment, obtaining technology, enhancing efficiency and ensuring growth in productivity. However, the experience on the ground has shown that quick, short-sighted approaches to liberalization through privatization have thrown small and medium size firms out of business, disturbing livelihoods, and the economic fabric of poor societies. In addition privatization has introduced a commercialisation of basic and essential services, such as education, water, health, sanitation, electricity, e.t.c, with the result that more people are excluded from benefit. Worse still, it has left many people unemployed.

² See UNCTAD LDC Report, 2006, On line Available <http://www.unctad.org>

III. Why Mode 4?

According to GATS Article II, Mode 4 involves the supply of a service *'by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member'*.

Movement of natural persons is the least liberalized mode of services supply in the GATS. A recent study by Alan Winters, et al, finds that the trade flows and volume of commitments that countries have recorded in Mode 4 under the GATS, is by far, the smallest. The same study predicts potential gains of over \$300 billion per year from increased labor mobility across the globe. UNCTAD, in its note on *Increasing The Participation Of Developing Countries Through Liberalization Of Market Access In GATS Mode 4 For Movement Of Natural Persons Supplying Services*³ finds that liberalizing the movement of workers could amount to 156 Billion dollars a year if developed countries increased their quota for the entry of workers from developing countries by 3%. Another study has projected annual gains of some 200 billion dollars if a temporary work visa scheme is designed and adopted multilaterally. UNCTAD further argues that such gains would exceed those that could be obtained from liberalization in traditional areas of trade. These gains would be shared between developing countries, (in the form of remittances), and developed ones (through fees for licenses, certification of qualifications, labour costs, living costs, insurance costs in host country, e.t.c)

LDCs have got a proven comparative advantage in the provision of services through the movement of their natural persons. Indeed, migrant work has increasingly become an international phenomenon of great proportion that it can no longer be ignored. It is estimated that to date, around 86 million migrant workers, both legal and unauthorized, are currently economically active in a country other than their own.⁴ Meaningful Mode 4 commitments stand to substantially increase LDC gain from this type of services delivery. Most of the Mode 4 commitments in Member's schedules to date pertain almost totally to highly skilled personnel, in particular intra-corporate transferees who move within the framework of juridical persons, typically large multi-national companies. Such commitments have limited utility for LDCs because their "comparative advantage" lies in low and medium-skilled services.

IV. The case for Mode 4 liberalization for semi-skilled workers

³ Available at www.unctad.org

⁴ Migration information source: Fresh thought, authoritative data, and global reach. Available at, <http://www.migrationinformation.org>

a) Demographic differences

Differences in demographics have contributed to the movement of workers. Most LDCs have high populations, and densities. This creates a surplus of people, constantly on the move in search for employment. At the same time, in northern countries, patterns show that the population is aging. These countries are facing a growing scarcity of semi-skilled labor in sectors such as health care (carers, nurses, para-medics), hotels and restaurants (cleaners, waiters, waitresses, cooks), construction engineering, services related to agriculture, e.t.c.

There is therefore a demand that is not being met with supply. Temporary movement of service suppliers under the GATS can help to better match this. While there is fear that such a large supply may limit employment opportunities, and create downward pressure on labour markets, it should be recalled that the short term, non-intrusion-on-domestic-employment market- nature of Mode 4 in the GATS, if managed well, can allay such fears.⁵ An effectively managed Mode 4 regime under the GATS can lead to greater efficiency of global companies with minimal impact on domestic markets.

b) Difference in education systems and specializations

Education systems in northern countries are increasingly sophisticated. As such, there is a focus on very highly skilled professions such as information communication and technology, research and development, medicine, and other aspects of the new knowledge world. While there may also be shortages of skilled workers in certain areas, there is definitely an inadequate supply of semi-skilled workers in these cases. On the other hand, in LDCs, education is still a privilege. Many countries still focus on basic education and equip their citizens with practical skills such as those got from technical colleges, and other tertiary institutions. Northern countries need such people to focus on the work which their own constituents would not pick as a first choice. Some of these occupations would fall in the health care sector, hotels, restaurants, construction, cleaning services, e.t.c. It follows therefore that as developed countries continue to climb the ladder of knowledge sophistication, space is created for those with comparative advantages in lower skill work to fill.

c) Remittances

A key beneficial result from Mode 4 is the growing contribution of **remittances** to LDC economies. Remittances are the part of international migrant's earnings that are sent from the host country to his/her country of origin. Remittances have proved to be a major, relatively stable, source of capital inflows for LDCs. The importance of remittances to economies of developing countries is ever-increasing, sometimes exceeding the flow of aid, as a source of external financing.⁶ Indeed, remittances are already worth more than Foreign Direct Investment (FDI) and Official Development

⁵ According to Paragraph 2 of the Annex on the Movement of Natural Persons Supplying Services Under the Agreement, The GATS shall not apply to measures affecting persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

⁶ World Bank. Global Development Finance, 2004. DFID memo.

Assistance (ODA). For many low-income countries, remittances, when measured as a share of GDP, are larger than for middle-income countries. Countries like Bangladesh and Lesotho record impressive remittance receipts, with the latter receiving 27 per cent, when measured as a share of GDP in 2001.⁷ In the case of Uganda, measures of GDP shares indicate that remittances have in recent years been at par with traditional exports such as coffee and cotton.

Remittances not only improve a countries' ability to finance development objectives, but also trickle down to the livelihoods of recipients, allowing them to engage in economic activity. Increasingly, this is becoming very critical for LDCs, which have a lot of middle- and lower-skill workers.

d) Enhanced skills circulation

There has been concern raised about the loss that countries face when their skilled people, in whom they have invested in education, go to other countries, causing brain drain. However, other studies have revealed that because of the temporariness of Mode 4 as envisaged in the GATS, the issue becomes one of gain, and circulation, as opposed to drain of the brain, and skills. A well managed Mode 4 that has in-built mechanisms assuring return to the sending countries can lead to a more comprehensive movement of skills, resulting in more optimal technology transfer, and potentially more investment when people return home. In the case of semi-skilled workers, Mode 4 commitments would enhance assumption of more technical skills that such persons would get out of experience on contracts in other countries.

e) Inroads into curbing permanent migration

Issues arise relating to potential increment in permanent migration. It is feared that since migrant workers come mainly from poor countries, they will be attracted to permanently remain in developed countries. However, the GATS Mode 4 envisages temporary movement. In order to ensure the temporariness, countries must find creative and effective ways to monitor Mode 4 services providers in a manner that ensures return home. Some of the ways would include special visa and other regulatory regimes that include cross-border service provisions for short-term foreign workers. Increasing options available to short term workers beyond those of tourist and permanent visas to include a short term work visa (GATS visa) can contribute towards temporariness of movement. The possibility of further opportunities, through visa renewal (possibly in sending countries) would enhance participation on a temporary basis, rather than slip into permanent migration.

V. Mode 4 and the GATS

The GATS is the key internationally recognized framework which presents an opportunity for international rules that govern temporary, short-term movement of individuals for work (as distinct from permanent migration) in an orderly, systematic,

⁷ See Note 1, supra.

and mutually agreed upon manner. The way in which Mode 4 will be organized in the international perspective will therefore be a result of GATS negotiations.

As seen above, the merits (in economic terms) of Mode 4 liberalization under the GATS are solid. According to Paragraph 5 of the GATS Preamble, one of the key objectives of the Agreement is to increase the participation of developing countries in trade in services, and to expand their services exports.(Emphasis added). LDCs have identified semi-skilled categories of natural persons as ones whose liberalization will constitute meaningful market access to them. The GATS can be useful in realizing this objective, by legalizing an already existing international phenomenon that holds great development potential.

VI. The mandate to liberalize Mode 4 for semi-skilled service suppliers in the GATS

Article IV: 1 of the GATS acknowledges the liberalization of market access in sectors and modes of supply of export interest to developing countries as a key way in which their increased participation in international trade can be achieved.⁸ In Article IV:3, LDCs are singled out as having special priority to this. The sectors and Modes of supply as identified by LDCs are therefore an important indicator of how they can best be integrated into the world trading system. Paragraph 9 of the LDC Modalities emphasizes Mode 4 as presenting potential benefit to both sending and recipient Members. It is also acknowledged that LDCs have indicated this Mode as one of the most important means of supplying services internationally. The Paragraph calls on Members to consider undertaking commitments to provide market access in Mode 4, *taking into account all categories of natural persons identified by LDCs in their requests*. This clearly shows that there is no exclusion in terms of categories.

The GATS does not make any exclusion of sectors on the basis of skill levels. According to Paragraph 3 on *the Annex to the Movement of natural persons supplying services under the GATS*, members may negotiate specific commitments applying to the movement **of all categories** of natural persons supplying services under the GATS. There is no apriori exclusion of categories of services suppliers.

VII. State of play in Mode 4 negotiations: The LDC Mode 4 request

In May 2006, the LDC group presented a revised request on Mode 4.⁹ This request came second to an initial one that had failed to achieve any meaningful response from recipient Members. The intention of this revised request is to implement Paragraph 9 of the LDC Modalities, which, inter alia, calls on LDCs to identify sectors and modes of export interest to them, so that Members can take these into account in their revised offers as well as eventual schedules of commitments.

⁸ See Article IV :1 (c)

⁹ JOB (06)/155

Table 1
Thematic features of the LDC revised request on Mode 4

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|---|
| <ul style="list-style-type: none"> ■ Sets out a broad list of sectors ■ Liberalisation de-linked from commercial presence ■ Extension of commitments beyond high minimum qualifications.(To include diplomas, and experience) ■ New ways to assess competencies beyond university degrees. (such as demonstrated experience). ■ Acceptance of substitutable options (diplomas, university degrees, or demonstrated experience, specialised certificates, certificates of proficiency, e.t.c) ■ Exclusion of wage parity as a pre-condition of entry ■ Direct receipt of remuneration by services supplier ■ Substantial reduction of quantitative restrictions ■ Substantial reduction of ENTs ■ Option of contract renewal ■ No direct employment on domestic market ■ Acceleration of verification and recognition of skill, competence and qualifications within 3 months. ■ Setting up skills testing facilities within 6 months of Doha Round completion. ■ Commitments sought for Independent Professionals, Business Visitors, Contractual Services Suppliers, and 'others'. |
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In the revised request on Mode 4, LDCs show key sectors in which they would like liberalization on Mode 4 in the GATS negotiations. Some of these include professional services, computer related services, research and development services, real estate services, communication services, education services, financial services, health and related social services, tourism and travel related services, recreational, cultural and sporting services, and transport services. Detailed sub-sectors are available in Annex A to this paper.

A unique theme of the LDC request, (as compared to the plurilateral request on Mode 4) is that it clearly targets the inclusion of categories beyond highly skilled providers. The request does this by broadening the scope of services providers whose competencies and qualifications may meet the standard for Independent Professionals, Business Visitors, and Contractual Services Suppliers. LDCs propose that such qualifications be diplomas, university degrees, or demonstrated experience, presenting these as substitutable options.

In the category of “**Others**”, LDCs seek to widen commitments to include such categories as Installers and services,¹⁰ Graduate trainees,¹¹ Personnel of public or private enterprises in another WTO Member with a State contract in the host country¹², Persons of internationally recognized reputation¹³ Artists, sportsmen and women¹⁴, and Fashion Models¹⁵ The requirements for certain of these categories are expanded to include holders of certificates.

There has been no response on the LDC request. Instead, negotiations on Mode 4 have focused on the Plurilateral Mode 4 request. LDCs did not participate in plurilateral negotiations. In many cases, demanders in plurilaterals were themselves ready to make commitments of the level requested. As LDCs are excluded from making commitments by the Hong Kong Ministerial Declaration, it is possible that Members did not find it important to discuss with LDCs. Another key reason why LDCs did not participate in these negotiations is that they do not have the resource ability to fly in capital based experts to attend each of the services clusters, which were the forum for plurilateral negotiations. Most of the Geneva-based delegates are not services experts. In any event, LDC delegates are often overwhelmed by the number of meetings in other areas of the WTO negotiations agenda.

When one looks at the details of the plurilateral request on Mode 4, even though some of the sectors overlap with those that are reflected in the LDC request, such as financial, construction, transport, and others, several of the sectors of key export interest to LDCs such as Health, Tourism, and Recreation do not appear. Therefore, such sectors have not received detailed exchange on potentials for liberalization. Even in the seemingly overlapping sectors, LDCs are looking at extending the scope beyond highly skilled professionals. LDCs want holders of diplomas, certificates, and people with proven experience, all to be eligible to supply services under the GATS, sometimes in a self employed capacity, de-linked from commercial presence. LDCs also want commitments for business visitors, and “others” (Ref. Models, artists, graduate trainees, e.t.c). Members should seriously consider the LDC request, to assist them in taking into account this group’s interest in the preparation of their revised offers.

¹⁰ Who would be foreign-based natural self employed persons that enter into the territory of another member to install or service machinery and/ or equipment for a service mentioned in the commitment of the host country.

¹¹ These would include non-resident natural persons with a diploma, university degree or post-graduate qualification who enter or remain in another WTO Member territory pursuing post graduate work for the purpose of obtaining appropriate work experience, business techniques or methods of a service mentioned in the commitment of a Member.

¹² This would include employees of a foreign based private or state enterprise who enter the territory of another WTO Member temporarily in order to perform a service contract (s) between their employer and a State or government department are envisaged. However, it is not clear how this request fits within the exclusion in Article 3 (b) which excludes services supplied in the exercise of governmental authority.

¹³ Who are invited to educational institutions, scientific research institutes, public educational institutions, and non-governmental organizations.

¹⁴ Taking part in public or private performances.

¹⁵ Participating in competitive or non-competitive events.

VIII. Towards a managed Mode 4 in the GATS

In order for Mode 4 commitments to be meaningful, they have to be underpinned by disciplines in Domestic Regulation that do not act as unnecessary barriers to trade. Members would have to take a more flexible approach to the recognition of qualifications, not only considering degrees, but also diplomas, certificates, experience, e.t.c. as substitutable options. For technical standards, it is imperative that they are not unreasonably high. In the case of semi-skilled workers, the focus should be on facilitating workers movement so as to get the job done.

Parallel to the above is the need for complementary policies to protect Mode 4 workers from all forms of employment discrimination. Mode 4 workers should also receive adequate social security benefits in the host nation. However, there is need for critical thought on the part of proponents of wage-parity non-applicability and potentials for exploitation.

Countries need to build coherent migration policies that are clear and distinct from Mode 4. One way to approach this would be to design special visas for Mode 4, (GATS Visa), define clear periods for service contracts, with equally clear times for renewal . After which, a provider would have to return home.

Governments must also work at designing programs that ensure return of people who have been working under Mode 4. This could be done through coordination with sending countries, and special visa regimes. There is need for more transparent information sharing between governments for this purpose.

All information relating to Mode 4 opportunities, wages, benefits, and others should be made available to the public to ease transparency, facilitate application processes.

Conclusion

Commitments for semi-skilled workers under Mode 4 can make positive contributions to developing countries and LDCs in particular. It would increase incomes for a wider range of people, improving their livelihoods, thereby contributing to the attainment of the Millennium Development Goals to rid the world of poverty. Increasing liberalization for highly skilled workers, while useful for others does not have as strong a developmental impact as would liberalization of Mode 4 for semi-skilled workers for LDCs. There are clear signals of mutual benefit for both sending and receiving countries. It cannot be forgotten that the Doha Round is about development. If managed effectively, liberalization of markets for semi-skilled providers stands to make real contributions to the development dimension of Doha. Indeed, it would signal great political flexibility on the part of developed countries, and potentially get Members thinking about creating breakthroughs in negotiations. While the issues holding the Round back lie elsewhere, the power of incentives has never been doubted....

Annex A: Summary of sectors, and sub sectors in the LDC request.

<p>Business visitors: Professional services; Legal services, accounting, auditing and book keeping, architectural services, engineering services, integrated engineering services, urban planning and landscape architectural services, medical and dental services, services provided by midwives, nurses, physiotherapists, and Para-medical personnel.</p>
<p>Computer related services; Consultancy services related to the installation of computer hardware, software implementation services, data base services.</p>
<p>Research and development services; R&D services in natural services, R&D services on social sciences and humanities, interdisciplinary R&D services</p>
<p>Real estate services: Involving own or leased property, on a fee or contract basis</p>
<p>Other business services: Advertising services, market research and public opinion polling services, management consulting services, technical testing and analysis services, services incidental to agriculture, hunting and forestry, services incidental to fishing, services incidental to mining, services incidental to manufacturing, services incidental to energy distribution, related to scientific and technical consulting , maintenance and repair equipment, photographic services, packaging services, printing, publishing, convention services</p>
<p>Communication services: Postal services Courier services, telecommunication services, and audio-visual services</p>
<p>Construction and related engineering services, environmental services,</p>
<p>Education services</p>
<p>Financial services: All insurance and insurance-related services, banking and other financial services</p>
<p>Health related social services</p>
<p>Tourism and travel related services: Hotels and restaurants, including catering, travel agencies and tour operators services, and tourist guides.</p>
<p>Recreational, Cultural and sporting services: Entertainment services, News agency services, libraries, archives, museums, and other cultural services, sporting and other recreational services.</p>
<p>Transport services: Maritime transport services and internal waterways transport.</p>

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